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No. 941

In the

United States Court of Appeals

For the Seventh Circuit

No. 12112

JOSEPHINE DAVIDITIS, also known as JOSEPHINE DAVIS, STELLA C. DAVIS and BETTY HORRIGAN,
Plaintiffs-Appellants,
vs.
THE NATIONAL BANK OF MATTOON, Mattoon, Illinois, a Banking Corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Illinois.

Honorable Casper Platt, District Judge.

BRIEF AND APPENDIX FOR THE APPELLANTS.

JOSEPHINE DAVIDITIS, also known as JOSEPHINE DAVIS, and STELLA C. DAVIS,
Pro Se,
4916 N. Magnolia Avenue,
Chicago, Illinois

BETTY HORRIGAN, *Pro se*,
1303 Carmen Avenue,
Chicago, Illinois,
RAvenswood 8-7930.

U. S. C. A.-7
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IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 12112

JOSEPHINE DAVIDITIS, also known as JOSEPHINE DAVIS, STELLA C. DAVIS and BETTY HORRIGAN,
Plaintiffs-Appellants,
vs.
THE NATIONAL BANK OF MATTOON, MATTOON, ILLINOIS, a Banking Corporation,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Illinois.

Honorable Casper Platt, District Judge.

BRIEF FOR THE APPELLANTS.

STATEMENT OF FACTS.

This action was brought to recover damages resulting from Fraud perpetrated upon the plaintiffs-appellants in the above entitled cause of action by the defendant-appellee, The National Bank of Mattoon, Illinois, a Banking Corporation. The Court entered Orders on June 3, 1957, to dismiss the action for lack of jurisdiction of the subject matter and on July 5, 1957 entered an Order upon Oral Arguments on Petitions to Vacate Orders entered on June 3rd, 1957 and to Dismiss were denied and Said Orders to dismiss said suits shall stand from which this appeal is taken. The errors relied on arise on rulings on affidavits and Exhibits, a substantial federal question to bring action within Section 1331, Title 28, deprivation of

constitutional and civil rights, and deprivation of the due process of law, fraudulent or conspiratorial acts of the defendant-appellee, the National Bank of Mattoon, Mattoon, Illinois.

The plaintiffs-appellants had complained to the Federal Bureau of Investigation in the year of 1950 and thereafter about the National Bank of Mattoon, and its official, Martin Behrend and others.

Ray M. Foreman, Assistant U.S. Attorney, together with Kenneth Clapper, Elizabeth McVey, E. C. Bauer and Martin Behrend conspired and perpetrated a fraud upon the appellants by causing a fraudulent petition for letters of administration to be filed and made a part of the records of the Coles County Probate Court on April 3, 1951, with a fraudulent acknowledgment by Elizabeth McVey annexed thereto, and a Hearing allegedly held in said court without Notice of same to the heirs or widow or knowledge of same on April 3, 1951 to appoint the National Bank of Mattoon, Mattoon, Illinois as administrator on this fraudulent petition. There wasn't any Waiver of Notice of Hearing filed by the appellants nor were they present in Court.

That the above mentioned persons and institution with the exception of Martin Behrend being present when they caused the opening of the decedent's lock box #932 in said bank without court order, legal authorization or any evidence to the heirs of legallity to do so on 4/3/51.

The plaintiffs-appellants and heirs-at-law did not come into the bank to ask for an administrator but came into said bank upon advice of Ray M. Foreman, defendant to inventorize the box of their late father. They had already paid for the funeral bill and other expenses prior to their

arrival into Mattoon, Illinois with the body of their late father.

The National Bank of Mattoon was involved with irregular and if not criminal proceedings together with an Assistant State's Attorney, Ralph Suddes and others in a fraudulent city court action No. 49-C-50 Mattoon, Ill. wherein they were defendants together with William Daviditis, alias William Davis, decedent and Josephine Daviditis, also known as Josephine Davis, plaintiff and wife.

By the fraud and conspiracy and intent to defraud the above named persons together with Ray M. Foreman, Assistant U.S. Attorney for that federal district and aided by Kenneth Clapper and at a later date by Clyde Meachum, to cause the plaintiffs-appellants legal disability, by unbeknown to heirs at law that they were not represented properly during this period, that Ray M. Foreman was playing a dual and criminal role with that of the National Bank of Mattoon, Mattoon, Illinois by depriving them of protection of Rights under the Constitution of the United States.

An F.B.I. agent sent the plaintiff-appellant to see Ray M. Foreman as United States Assistant Attorney for the Eastern District of Illinois, as such in his capacity saw him on December 9, 1950, and has since that date conspired and help defraud the plaintiffs-appellants together with the National Bank of Mattoon and its official Martin Behrend. That by this act the plaintiffs-appellants suffered great losses in moneys, legal fees, court costs, many judgments and are not able to get any legal relief in the State of Illinois or anywhere else for this conspiracy and fraud upon them and as they do not have the legal knowledge to perfect their causes of action and are denied legal

counsel whenever they petition the courts for same because they cannot retain one, because they are suing a bank and attorneys or because they are suing this particular attorney, Ray M. Foreman.

SUMMARY OF ARGUMENT.

I.

The Issues presented substantially and directly affect the Constitutional and Civil Rights and Privileges granted under the Constitution of The United States and the Bill of Rights cases, and constitute Federal Questions of substance not heretofore determined.

II.

The Courts below decided the issues in a manner inconsistent with the basic principles involving the Rights and Privileges of the Complainants.

CONTESTED ISSUES.

The contested issues are to Dismiss the Complaint for lack of federal jurisdiction, and to strike the Complaint from the records of the court, for reasons of scandalous recitations and allegations, by Foreman, Meachum and Clapper, attorneys for appellee, The National Bank of Mattoon.

The appellants in their Reply Brief Affidavits state the Federal Court was vested with Jurisdiction of suit seeking redress for deprivation of Civil Rights guaranteed by the Constitution of the United States Amendment 14, regardless of Citizenship or amount in controversy.

That under Rule 9, of C.R. of C.P. this rule requiring that averment of Fraud be stated with particularity. Complaint alleging Fraud was not subject to Objection alleging it contained impertinent or scandalous allegations.

PROPOSITIONS OF LAW RELIED ON.

I.

The Charges of Fraud as such set forth is a Denial of Due Process of the Law and violation of the 14th Amendment to the Constitution.

Bradley, 7 Wall. 364, 19 L. Ed. 214, December 1868.

Cummins v. *U. S.*, Ark. 1916, 232 F. 844, 147 CCA 38.

Magnum Import Co. v. *McCoty,* N.Y. 1925, 43 S. Ct. 262 U. S. 159, 67 L. Ed. 922.

II.

It is the Right of every Private Citizen of the United States to Inform an F.B.I. Agent, Treasury Agent, etc., of violation of Internal Revenue Laws or other United States Laws under Rule 56 U.S.C., Title 28.

In Re Quarles, Ga., 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080.

III.

Unlawful Searches may violate the 4th Amendment to the Constitution made by Subterfuge or Fraud rather than by force.

Carroll v. *U. S.*, 267 U.S. 132.

IV.

Federal District Court was vested with Jurisdiction of Suit seeking Redress for Deprivation of Civil Rights guaranteed by the USCA Constitution, Amendment 14, regardless of Diversity of Citizenship or amount in Controversy.

Ex Parte-Virginia, 100 U.S. 346-7.
Ortega v. *Ragan,* C.A. Ill. 1954.

V.

In the absence of a Counnter-Affidavit averments contained in Affidavits and Supported by Exhibits by the Plaintiffs in Support of their reply Brief must be taken as true.

Leitch v. *Hine,* 393 Ill. 211, 218.
Brandt v. *St. Paul Mercury Indemnity Co.,* 285 Ill. 212, 217.

VI.

Rule 9 — Civil R. of F. P. Under this rule requiring that averments of Fraud be stated with Particularity complaint alleging Fraud was not subject to Objection that it contained redundant, immaterial, impertinent or scandalous allegations.

Israel v. *Alexander,* D.C. N.Y. 1942, 50 F. Supp. 1007.

"Wilful" in the Act of Congress of 1882, 22 Stat. at L. 166 Title 13 imposing a penalty on a National Bank Officers or agents on wilful violations of the Law, implies a knowledge and purpose to do wrong.

Potter v. *U. S.* 438, 15 S. Ct. 144, 49 L. Ed. 214.

ARGUMENT.

I.

The Federal District Court Was Vested With Jurisdiction of Suit Seeking Redress for Deprivation of Civil Rights Guaranteed by the United States Constitution, Amendment 14, regardless of Diversity of Citizenship or Amount in Controversy.

This action involves "Officers of the U.S. representing a National Bank which is subject to the paramount authority of the United States. These federal men under a salary of the government, were also getting an outside salary from an Estate wherein the bank came in as Administrator by Conspiracy and Fraud instigated by the defendant-appellee, Ray M. Foreman, Assistant U. S. Attorney, aided by Kenneth Clapper, and at a later date by Clyde Meachum, U.S. Referee in Bankrupcy.

There was a "Conflict of Interest" between the widow of the decedent (Tr. p. 69), the heirs-at-law and the National Bank of Mattoon, Illinois in 1949 and 1950 prior to the death of William Daviditis, alias William Davis (Tr. pp. 16-18) and in view of such conflict of interest it fraudulently became the administrator of the estate of the decedent, whereas they had formerly been Trustees in a fraudulent Separate Maintenance Action in the City Court of Mattoon, Mattoon, Illinois, 49-C-50 (Tr. p. 76) wherein they were defendants with the decedent and the widow, plaintiff. (Tr. p. 58). Bradley, 7 Wall. 364, 19 L. Ed. December 1868, and *Cummins* v. *U. S.*, Ark. 1916, 232, F. 844, 147 C.C.A. 38.

Under U.S.C. 12, sec. 248 (K) the bank is given the right to act as administrator, etc. and they are not re-

quired to execute bonds under the Probate Act of Illinois. We submit that this Rev. Stat. Chapter 3, sec. 335 and Rev. Stat. Chapter 3 sec. 299 to recover property and discover information regarding same is in contravention of the law under U.S.C. Title 12, sec. 248, and unconstitutional when it gives an administrator, trustee, etc. who is clothed under the Federal and State power and who is in direct conflict with the rights and interest of the heirs and widow of the decedent, and who usurps that power to refuse access under the law to the decedent's dealings, financial and otherwise, and who is being accused of fraud and conspiracy and other misapplications and violations of the National Banking Act is in a position to forevermore deny them of access to the confidential records of all trusteeships, conservatorships, etc. which the bank had prior the death of William Daviditis, alias William Davis, thereby being in direct conflict of the appellants' interest when there was prior adverse litigation and the bank was the defendant together with the decedent and the widow the plaintiff. (Tr. pp. 7, 11, 12).

The appellee, Ray M. Foreman, together with Kenneth Clapper and Elizabeth McVey, aided by E. C. Bauer, caused a fraudulent petition for letters of administration issued, with a fraudulent acknowledgment affixed to same by Elizabeth McVey. Ill. Rev. Chpt. 38, sec. 321 and 322. No hearing was had as far as the heirs and widow were concerned and no notice of this alleged hearing served upon them, neither did they waive this right in writing according to the Probate Law. Illegal Searches by the appellees, Ray M. Foreman and Kenneth Clapper, and getting access into the safety deposit box #932 of the decedent without the "Due Process of the Law" on a federal working day and no protection of the rights of the heirs and widow. *Colorado Nat'l Bank of Denver* v. *Bedfore,* Colo. 1940.

Potter v. *U. S.*, 155, 438, 15 S. Ct. 144, 39 L. Ed. 214, and *Carroll* v. *U. S.*, 267 U.S. 132. Unlawful Search may violate the 4th Amendment to the Constitution by Subterfuge or Fraud. Bradley, 7 Wall. 364, 19 L. Ed. 214, December 1868. *Whitlock* v. *McClusky*, 91 Ill. 582.

II.

It Is the Right of Every Private Citizen of the United States to Inform an F.B.I. Agent, Treasury Agent, etc., of Violation of Internal Revenue Laws or Other U. S. Laws Under Rule 56 of U.S.C., Title 28.

In Re Quarles, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080. The appellants did inform the F.B.I. on the National Bank of Mattoon, Mattoon, Illinois and its official, employee, and others. That as the result of such information and disclosure they were oppressed, threatened and intimiated, and more so by the defendant-appelle, Ray M. Foreman, U.S. Assistant Attorney involved as an attorney for the National Bank of Mattoon in their late father's and husband's estate due to the prior conflicts of interests. This right to inform is secured by the Constitution and a conspiracy to injure, oppress, threaten or intimidate them in the free exercise or enjoyment of this right, or because of their having exercised it may be punishable by an "Act of Congress". (Tr. pp. 4, 34, 35, 41, 46, 52).

III.

Where Existence of Fiduciary Relationship Has Been Established, Law Presumes That Transactions Between Parties by Which Dominant Party Has Profited Are Fraudulent.

Stephenson v. *Kidechek*, 919 N.E. 542, 410 Ill. 139.

IV.

In the Absence of Counter-Affidavits Averments Contained in the Affidavits and Supported by Exhibits by the Plaintiffs in Support of Their Reply Brief Must Be Taken as True.

Leitch v. *Hine*, 393 Ill. 211, 218.
Brandt v. *St. Paul Mercury Indemnity Co.*, 285 Ill. 212, 217.

V.

"Wilful" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13, Imposing a Penalty on a National Bank Officers or agents on Wilful Violations of the Law Implies a Knowledge and Purpose to Do Wrong. (Tr. .....)

Prescott v. *Haughey*, C.C. in 18956 S. F. 569.

VI.

Rule 9, Civil R. of F. P. Under This Rule Requiring That Averments of Fraud Be Stated With Particularity Complaint Alleging Fraud Was Not Subject to Objection That It Contained Redundant, Immaterial, Impertinent or Scandalous Allegations.

Israel v. *Alexander*, D.C. N.Y. 1942 50 F. Supp. 1007.

VII.

That the Appellants Petitioned the Court for an Attorney and Were Denied Same in Court and in Court They Made an Oral Motion to Transfer Their Cause of Action to the Criminal Side of the Docket and Were Denied This, Too.

CONCLUSION.

It is respectfully submitted that the records of this action present issues of great importance to the furtherance of justice to the appellants, and we further submit that the Orders of the District Court be reversed and remanded and that the cause of action be tried on the Facts, Merits, Evidence, Exhibits and a right of trial by jury.

Respectfully submitted,

JOSEPHINE DAVIDITIS, also known as
JOSEPHINE DAVIS, *Pro Se*
4916 N. Magnolia Avenue,
Chicago, Illinois

STELLA C. DAVIS, *Pro Se*
4916 N. Magnolia Avenue
Chicago, Illinois

BETTY HORRIGAN, *Pro Se*
1303 Carmen Avenue,
Chicago, Illinois

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APPENDIX.

1

In The District Court Of The United States
For The Eastern District Of Illinois

Josephine Daviditis,
also known as
Josephine Davis,
Stella C. Davis and
Betty Horrigan,
Plaintiffs-Appellants
v.
The National Bank Of Mattoon,
Illinois, a Banking Corporation,
Defendant-Appellee,
} Civil Action No. 1533-D

Stella C. Davis, Pro Se
4916 N. Magnolia Avenue, Chicago, Illinois.

Betty Horrigan, Pro Se
1303 Carmen Avenue, Chicago, Illinois.
Plaintiffs-Appellants.

Foreman, Meachum & Clapper,
708 Baum Bldg., Danville, Illinois.
Attorneys For Defendant-Appellee.

Honorable Casper Platt, Trial Judge.
Federal Building
Danville, Illinois.

D. H. Reed, Clerk, U.S. District Court
Eastern District of Illinois
Federal Building
Danville, Illinois.

Vernon Woods, U.S. Marshal
Eastern District of Illinois
Post Office Building
East St. Louis, Illinois.

Pleas In The District Court Of The United States Within And For The Eastern District Of Illinois At A Regular Term Thereof, Begun And Held In The United States Court Room In The City Of Danville In Said District Before The Honorable Casper Platt, Judge Of Said Court, On The First Monday Of March In The Year Of Our Lord One Thousand Nine Hundred And Fifty-Seven And Of The Independence Of The United States Of America, The One Hundred And Eighty-First Year.

D. H. Reed
Clerk, United States District Court
For The Eastern District Of Illinois.

2

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—Civil Action No. 1533-D) * *

CLERK'S STATEMENT OF RELEVANT DOCKET ENTRIES IN THE DISTRICT COURT, UNDER RULE 12(e) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1957

Mch. 26—File Complaint for Damages resulting from Fraud.

Mch. 26—Issue Summons and deliver to U.S. Marshal for immediate service.

Apr. 1—File Appearance of Stella C. Davis, Pro se, 4916 N. Magnolia Ave., Chicago, Illinois.

Apr. 3—File U.S. Marshal's Return of Service on The National Bank of Mattoon by handing to and leaving a true copy of Complaint and Summons with John W. Sheeks, Vice president of said Bank at Mattoon, Illinois at 1:50 P.M. on March 28th, 1957 by Willard Corcoran, Deputy U.S. Marshal. (Fee—$18.00) Marshal's Civil # 1920.

Apr. 17—File Motion of Defendant to Dismiss and Affidavit of Service of the Motion and Brief.

Apr. 17—File Defendant's Brief in Support of Motion to Dismiss.

May 13—File Plaintiffs' Reply Brief to Defendant's Motion to Dismiss and Affidavits in Support of Plaintiffs' Reply Brief, to which is attached:

1. Affidavit of Service by Mail to The National Bank of Mattoon, via Certified

Mail No. 830819 and to the Law firm of Foreman, Meachum & Clapper, 31 North Vermilion Street, Baum Building, Danville, Illinois, and to the National Bank of Mattoon, Broadway, Mattoon, Illinois.

2. Affidavit in Support of Plaintiff's Reply Brief to Defendant's Motion to Dismiss by Davis.
3. Affidavit in Support of Plaintiff's Reply Brief to Defendant's Motion to Dismiss by Horrigan.

May 20—File Supplemental Affidavit in Support of Plaintiff's Reply Brief to Defendant's Motion to Dismiss.

File Affidavit in Support of Complaint for damages resulting from Fraud and Exhibits annexed thereto. Affidavit of Service of copies attached.

May 31—File Plaintiffs' Motion for Production of Documents, etc., together with Affidavit of Service and Affidavit in Support of Complaint for Damages resulting from Fraud.

3

June 3—Enter Order of Court on Defendants' Motion to Dismiss for lack of jurisdiction—Since the plaintiffs have alleged only a tortious action against defendant bank—it is necessary for them to allege diversity of citizenship to give this court jurisdiction of the subject matter. This they have not done, and in fact it is clear that plaintiffs are citizens of Illinois as well as the defendant bank. There is no alternative for this court but to dismiss the action for lack of jurisdiction of

the subject matter. It Is So Ordered. (Drawn) Platt, Judge.

June 4—Mailed copies to three plaintiffs, Chicago, Illinois and to Foreman, Meachum & Clapper, Danville Attorneys for Defendant.

June 13—File Petition to Review and Vacate Order of June 3rd, 1957 and Affidavit in Support thereto. (Stella C. Davis, Pro se)

June 14—Enter Order of Court granting Petitioner the right to have Oral Argument on Petition to vacate, and that said Petitioners choose counsel of this court who are ready and willing to serve litigants at a reasonable fee. Plaintiffs should employ their own counsel to represent them in these suits unless they desire to appear pro se. Ordered that parties appear for Oral Arguments on Petition to vacate on July 5, 1957 10 O'Clock A.M. (DST) in Danville, Illinois. (Drawn) Platt, Judge.

June 14—Mailed copies to each of three Plaintiffs and to Foreman, Meachum & Clapper Attorneys.

July 3—File Stella Davis Return of Subpoenas served upon Mrs. James (Elizabeth) McVey, Mishawaka, Indiana, and upon the National Bank of Mattoon.

July 5—Enter Order upon Oral Arguments on Petitions to vacate Two Orders entered June 3, 1957 and dismissing suits. Appearances; Stella C. Davis, Betty Horrigan and Josephine Daviditis, also known as Josephine Davis, pro se. Arguments heard and petitions to vacate the two Orders of June 3rd, 1957 Ordered Denied and Ordered that the Orders entered

6/3/57 dismissing said suits shall stand. (Drawn) Platt, J.

July 5—Mailed copies of above Order to Plaintiffs Stella C. Davis and Betty Horrigan, Chicago, Illinois and to Foreman, Meachum & Clapper, Attorneys for Defendant Bank and for themselves as Defendants in Civil 1502-D.

July 10—File Eastern Illinois U.S. Marshal's Return of Service of Subpoena upon Martin Behrend, President of National Bank of Mattoon; upon E. C. Bauer, First Cashier (Officer) of said Bank and Ralph Suddes, Attorney, Mattoon, Ill. Clerk's Office returned the three checks for attendance to Stella C. Davis on July 5th, 1957.

July 19—File Notice of Appeal to U.S. Court of Appeals (Taken by Plaintiffs on July 5th, 1957 Order) pursuant to Rule 73(b). Fee Paid—$5.00

July 19—Issue Clerk's Certificate of mailing copies of Notice of Appeal to Defendant National Bank of Mattoon, and to their attorneys Foreman, Meachum & Clapper, Danville, Illinois.

Aug. 2nd—File Appeal Bond in the sum of $250.00 by Josephine Daviditis, et al., as principal with Globe Indemnity Company as Surety. (Bond No. 267291). Said Appeal Bond "Approved" 8/2/57 Casper Platt, U.S. Dist. Judge.

Aug. 6th—File Designation of Record on Appeal to the United States Court of Appeals for the Seventh Circuit.

Aug. 9th—File Statement of Points with Affidavit of Service by Mail.

Aug. 12th—File a Supplement to Affidavit in Support of Complaint for Damages resulting from Fraud and Plaintiff's Reply Brief and Exhibits Annexed thereto filed May 31, 1957 with Affidavit of Service by mail.

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21 to- —Appearance of Stella C. Davis, Pro Se.

22—Summons with U.S. Marshal's Return of Service thereon.

23 thru 25—Motion to Dismiss with Affidavit of Service.

26 thru 29—Defendant's Brief in Support of Motion to Dismiss.

30 thru 47—Plaintiffs Reply Brief to Defendant's Motion to Dismiss and Affidavits in Support of Plaintiffs Reply Brief with Affidavit of Service by Mail.

48 and 49—A Supplement to Affidavit in Support of Plaintiff's, Stella C. Davis Reply Brief to Defendant's Motion to Dismiss.

50 thru 60—Affidavit in Support of Complaint for Damages Resulting from Fraud and Exhibits annexed thereto.

61 thru 83—Motion for Production of Documents and etc., pursuant to Rule 34 of F. R. of Civ. P. and Affidavit of Service by Mail—Affidavit in Support of Complaint for Damages Resulting from Fraud and Plaintiff's Reply Brief and Exhibits Annexed thereto.

84 thru 87—Order of Court entered June 3rd, 1957 Dismissing the action for Lack of Jurisdiction of the subject matter.

88 thru 92—Petition to Review and Vacate filed June 3rd, 1957, A.D. and Affidavit in Support thereof and Affidavit of Service by Mail.

93 thru 95—Court Order of June 14th, 1957 that the parties appear for Oral Argument on the Petitions to Vacate on July 5, 1957 at 10 A.M. (DST) in Danville, Illinois.

96 Only—Civil Subpoena prepared by Stella C. Davis and return of service.

97 and 98—Court Order that the petitions to vacate the two orders dismissing the two mentioned suits, be and they are hereby denied 7/5/57.

99 thru 101—Civil Subpoenas for three witnesses for Oral Arguments prepared by Stella C. Davis and Betty Horrigan, Pro Se and U.S. Marshal's Return of Service.

102 thru 104—Notice of Appeal to the United States Court of Appeals pursuant to Rule 73(b) of F.R. of C.P.

105 Only—Clerk's Certificate of Mailing copies of Notice of Appeal.

106 thru 108—Appeal Bond in sum of $250.00 with Approval by U.S. Dist. Judge Platt.

109 thru 113—Designation of Record on Appeal to The United States Court of Appeals for the Seventh Circuit, with Affidavit of Service by Mail.

114 thru 118—Statement of Points with Affidavit of Service by Mail.

119 thru 121—A Supplement to Affidavit in Support of Complaint for Damages Resulting from Fraud

and Plaintiff's Reply Brief and Exhibits Annexed thereto filed May 31, 1957 with Affidavit of Service by mail.

122—Clerk's Certificate to Transcript of Record on Appeal.

5

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil No. 1533-D) * *

COMPLAINT FOR DAMAGES RESULTING FROM FRAUD

(Filed Mar 26 1957)

Jurisdiction In This Cause Is Based On Title 28, Section 1331 of The U. S. Code.

This is a suit-at-law arising under the Constitution and laws of the United States, and that the Matter in Controversy herein exceeds the sum of three thousand (3,000) dollars.

Plaintiffs, Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Pro Se, complains and alleges:

1. Plaintiffs, are residents of the City of Chicago, County of Cook, Illinois.

2. Defendant, The National Bank of Mattoon, is a banking corporation, organized and existing under the laws of the State of Illinois, having its principal office in the city of Mattoon, County of Coles, Illinois, in said state, in the Eastern District of Illinois, and a citizen of said state.

3. On the 3rd day of April, 1951, in the City of Mattoon, State of Illinois and County of Coles, the defendant, The National Bank of Mattoon, through its officials, Martin F. Behrend, and E. C. Bauer, and its employee, Elizabeth McVey, and other unnamed persons caused

Fraud to be perpetrated upon the plaintiffs. They were aided and abetted in this conspiracy to perpetrate fraud upon the plaintiffs by Ray M. Foreman, Assistant U. S. Attorney, of said federal district, and Kenneth Clapper in the following manner:

(a) By causing the safety deposit box #932 opened and contents examined and listed, contrary to the
6 "Due Process of the Law" and violations of the Rules and Conditions of the National Bank of Mattoon's Safety Deposit Box Department sections 1 and 2 without an administrator petitioned, mentioned, nominated or appointed by the Coles County Probate Court of Illinois. The defendant, The National Bank of Mattoon, together with it's trust officer E. C. Bauer, and employee, Elizabeth McVey with co-conspirators, Ray M. Foreman and Kenneth Clapper perpetrated this Fraud upon the plaintiffs. By this Act they violated their rights of equal protection of the laws under the XIV amendment to the Constitution. The annexed "Exhibit "A", letter by Ray M. Foreman, dated November 20th, 1951, portrays the fraud, false misrepresentation and deceitful acts of the above named defendant and persons.

(b) The defendant, The National Bank of Mattoon, and its employee, Elizabeth McVey, on April 3, 1951, caused a Fraudulent acknowledgment on the annexed copy Exhibit "B" Petition for Letters of Administration, dated and filed April 3rd, 1951. This was a violation of Section 321 and 322 of Chapter 38 of Ill. Revised Stat. She was not physically present in the plaintiff's hotel room in Mattoon, Illinois to witness the signature of the plaintiff, Stella C. Davis, which was obtained by fraud, false pretenses duress and coersion on said date by Ray M. Foreman, Assistant United States Attorney on a form used in Vermilion County, Illinois, aided and abetted by Kenneth Clapper.

(c) The former employee, Elizabeth McVey, left the State of Illinois a few weeks or so before the Probate Hearing on April 25, 1952, to avoid a subpoena and to get out of the jurisdiction of said Probate Court in order not to give any testimony on the fraud perpetrated upon the plaintiffs, and avoid prosecution of same.

(d) The defendant, The National Bank of Mattoon, Mattoon, Illinois in violation of the National Bank Act permitted, Ray M. Foreman and Kenneth Clapper to make illegal searches of the decedent, a long time customer of said bank of his assets, accounts, and past holding in said bank prior an appointment and qualification of an administrator and without a court order authorizing such a search.

7 4. The defendant the National Bank of Mattoon, Mattoon, Illinois, through their officials and employee, Elizabeth McVey, on April 3rd, 1951, aided by Ray M. Foreman, Assistant United States Attorney and Kenneth Clapper perpetrated a Fraud upon the plaintiff's by scheming together to make it appear official that the plaintiffs came into said bank on that date to ask the bank to be administrators of the estate of their deceased father, William Daviditis, alias William Davis, a customer of thirty-five years or more of said bank.

5. The representations so made by the defendant, its officials and employee, Ray M. Foreman and Kenneth Clapper were in fact false and the true facts were as follows: the plaintiffs, Stella C. Davis, and Betty Horrigan, together with their sister, Marie Myers came into the bank upon the advice of Ray M. Foreman, counsel representing Stella C. Davis, her mother and other interested heirs were instructed on April 2, 1951, to come into the bank on April 3rd, 1951, following the funeral of their late father and open his safety deposit box #932, that was all. No mention of administrator was made and none

of the heirs present asked for the bank to be the administrator. After inve..oring the lock box they walked out of the bank with their counsel Mr. Foreman and Kenneth Clapper, without an administrator mentioned, petitioned or qualified.

6. The proceedings in the Probate Court in Coles County allegedly held on April 3, 1951, are irregular according to the information and belief, of the plaintiffs, Stella C. Davis, and Betty Horrigan, because they were never notified of such Hearing and never entered an appearance and were under the Due Process of the Law a violation of their constitutional rights in view of the fact that their counsel of record on said petition, obtained by fraud, was also representing, the antagonist to them, the defendant, the National Bank of Mattoon at the same time.

7. When the defendant through fraud, false misrepresentations, false and deceitful acts together with Ray M. Foreman, aided by Kenneth Clapper and Elizabeth McVey caused a fraudulent document to be filed in the Probate Court of Coles County, Illinois, making them administrators and in a position to conceal embezzlement, reissued and manipulated bonds (United States Savings) for-
8 geries on checks that the defendant the National Bank of Mattoon, Mattoon, Illinois cleared for payment, approximately Nineteen Thousand Dollars worth of United States Savings Bonds missing, an irregu.. Declaration of Trust on or about October 4, 1949, outstanding debts due to the estate, violation of the inchoate right of Dower of the widow in all properties conveyed, without her signature to same, concealment of the conservatorship, which on information and belief was obtained by the defendant, The National Bank of Mattoon, on the deceased in 1949, the fraudulent Separate Maintenance Action no. 50-C-49 in the City Court of Mattoon, Illinois, County of

Coles, wherein the defendant, The National Bank of Mattoon, were defendants with the deceased, William Daviditis, alias William Davis, versus the plaintiff, Josephine Daviditis, also known as Josephine Davis, the now widow, and as a result of this fraud became the trustees and the widow beneficiary. The annexed Exhibit "D" Order for Injunction Writ clarifies the banks position in this matter.

8. The above mentioned allegations were violations of Title 12 U.S.C. section 1818—unsound practices and violations of the National Bank Act.

9. The defendant, collected rentals on the income property in the City of Mattoon, Illinois, without written consent of the heirs, and instead of sending it to them, they put it into the Probate Court. They abanded the property without notice to the plaintiffs in the winter time and caused them a terrific loss by such act.

10. By the fraud of the defendant the National Bank of Mattoon upon the plaintiffs, they were without proper legal help, due to the conspiracy to defraud by the defendant and Ray M. Foreman, Assistant United States Attorney, who unbeknown to the plaintiffs during most of the Probate Period was protecting the defendant, and violating the trust and confidence of his clients, especially, Stella C. Davis, who had hired him, and since the F.B.I. agent referred Ray M. Foreman to her, after her complaints to the F.B.I. as well as, the plaintiff's Betty Horrigan complaints to them had very little reason to believe that Mr. Foreman was deliberately conspiring against them and protecting the defendant and helping him in this fraud upon them.

9 11. The annexed Exhibit "C" letter dated January 17, 1952, in re; Estate of William Daviditis, alias William Davis, from Ray M. Foreman to Mrs. Stella C. Davis, and the attached statement of Martin F. Behrend with reference to certain transactions of William Daviditis during

the year 1949, wherein Mr. Behrend, then Vice-President and Trust officer picked up William Daviditis, alias William Davis, money bonds and other valuables in the City Jail of Mattoon, Illinois, and only then gave a statement, which the plaintiffs doubt the genuiness of, since they were denied such statement by the defendant, The National Bank of Mattoon, Illinois through it's officials, and since they became the administrators through Fraud perpetrated upon the plaintiffs and through fraud obtained the attorney of the plaintiffs, Ray M. Foreman, they were not in the position to test the genuiness of the signatures and of the documents and transactions mentioned by the official of the National Bank of Mattoon, Martin F. Behrend. Neither was there an official inventory in the City jail in Mattoon, Illinois itemizing the valuables picked up in the city jail.

12. By reason of such false and fraudulent pretenses, representations, the plaintiffs suffered great losses in moneys, legal fees, court costs, realty, bonds, and other valuable assets in the amount of Seventy-Five Thousand Dollars ($75,000.00).

Wherefore, plaintiffs demands judgment for damages against the defendant, The National Bank of Mattoon, Mattoon, Illinois in the sum of Seventy-Five Thousand Dollars, with interest from the 3rd day of April, 1951 together with costs and disbursements of this action, and a Trial by Jury.

/s/ Josephine Daviditis
Josephine Daviditis, Pro Se
(same address as S. C. Davis

/s/ Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia Ave.,
Chicago, Ill.

/s/ Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Ave.,
Chicago, Ill.

State of Illinois
County of Cook, City of Chicago } ss

Subscribed and sworn to before me this 25th day of March, 1957.

/s/ Maurice Kelman
Notary Public
My commission expires 1st Feb. 1959.

10

IN THE UNITED STATES DISTRICT COURT

• • (Caption--No. 1533-D) • •

COMPLAINT FOR DAMAGES RESULTING FROM FRAUD
(Filed Mar 26 1957)

Jurisdiction In This Cause is Based On
Title 28, Section 1331 of the U. S. Code.

The plaintiffs, Stella C. Davis, Betty Horrigan, Pro Se, hereby demands that the clerk of the United States District Court for the Eastern District of Illinois issue a Summons upon the National Bank of Mattoon, Mattoon, Illinois, a Banking Corportion, defendant in the above entiled cause of action.

/s/ Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia Ave.,
Chicago, Ill.

/s/ Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Ave.,
Chicago, Ill.

Dated this 26th day of March, 1957 A. D.

11

(Letterhead of Foreman & Meachum)

November 20, 1951

Mr. Edward W. Parlee
Attorney at Law
203 North Wabash Avenue
Chicago, Illinois

Re: Estate of William Daviditis.

Dear Sir:

Miss Stella Davis advises us that she has contacted you for the purpose of securing personal representation in the above entitled case. We have advised Miss Davis that we would write you giving you a resume of the status of this case so that you would be in a position competently to advise her of that which she might or might not properly be able to do.

Mr. William Daviditis, otherwise known as William Davis, died March 25, 1951. I had previously been contacted by Stella Davis prior to the death of her father with respect to certain matters relative to his property interests, and at the time of his death received a telephone call by her from San Francisco requesting that I make necessary arrangements for his funeral at Mattoon, Illinois and handle the estate. Pursuant to such request I did make arrangements, drove to Mattoon at her request on the night of the arrival of the body of the deceased in order to ascertain that the necessary arrangements were satisfactorily consumated with respect to the funeral, thereafter returned to Mattoon, and conferred with the

widow, Stella Davis, and her two sisters, Betty Horrigan of Chicago, Illinois, and Marie Meyers of Mattoon, Illinois, four of the five heirs, the fifth heir being a daughter of the decedent, one Matilda Marion who lives in San Francisco.

Following the funeral we proceeded to the National Bank of Mattoon, Mattoon, Illinois, at which Bank the decedent had his safety deposit box together with his Bank account. We conferred with the Trust Officers at that institution, secured telephonic consent from the Attorney General to open the safety deposit box, opened
12 safety deposit box 392 on April 3, 1951, and listed all of the assets of the estate shown in the safety deposit box. A complete inventory of such box was prepared, and copies have been sent to each of the heirs. In addition to the assets disclosed by the inventory there is also additional assets consisting of a $5,000.00 deposit in the Mattoon Federal Savings and Loan Association, savings account 488-A made by the National Bank as trustee. By the terms of the trust (details of which can be given you by Stella Davis) this became a part of the assets of the estate together with a commercial bank account by the trustee in the sum of $1576.61, and an open account in the name of the decedent, $1326.27.

Following the inventory of the deposit box a meeting was held by the four heirs, Mr. Kenneth Clapper, my associate attorney, and myself at the hotel, at which it was decided that the heirs would request the National Bank of Mattoon to act as administrator, and a petition for that purpose was prepared and executed by Stella Davis, and subsequently the Bank was appointed and qualified as administrator.

The several heirs, and in particular Stella Davis, believe that the foregoing statement of assets did not comprise the complete assets of the estate. Miss Davis had some

information relative to some farm land in Champaign County formerly owned by her father sold under contract of sale under date of January 26th, 1946 to Joseph and June O'Brien for the sum of $16,800.00, $1,000.00 being paid down, and the balance to be paid on or before March 1, 1946; a lot known at Lot 3 of Block 5 in Elmwood Place Addition to Mattoon; and lot 1 in block 14 of Giblers replat of lots 3 and 4 of block 14 and known as the addition to the City of Mattoon.

At the heirs request, we made considerable investigation into the ownership of these alleged additional assets. We ascertained that the $15,800 balance was not reflected upon the account of the decedent, nor did the value of such asset appear to be reflected in the inventory of bonds. In 1949, however, shortly prior to the trust agreement issued by the decedent on behalf of his wife, certain proceedings had been instituted in Coles County for having the decedent declared incompetent, and at that time the decedent was known to have withdrawn a large number of bonds from his deposit box, cashed them, and to be spending
13 the proceeds. Our investigation subsequently determined that $21,000.00 face value of E Bonds were purchased by the decedent in the names of himself and his wife and daughters, $5,000.00 for his wife, and $4,000.00 for each of his daughters, the date of purchase being February 28, 1946 which we ascertained to be the day following the payment to him by the O'Briens of the $15,800.00 balance of the purchase price of the farm. All of these bonds were cashed in the fall of 1949, and we secured the complete information as to date of purchase and sale from the recordak of the National Bank of Mattoon, copies of such bonds being given to the several heirs. The decedent had been spending money from the proceeds of such bonds only a couple of days before he was placed in jail by the above described court proceedings, and Mr.

Baran, one of the officers of the Bank, persuaded him to hand over the balance of cash to him which was in the sum of $15,000.00, and which was deposited to the decedent's account. A part of such money was used in the setting up of the $8,000.00 trust, $5,000.00 of which was used in the purchase of the Mattoon Federal Savings account 489-A, $1,000.00 was later used by the decedent when he went to California, and the balance was still in his account at the date of death.

Lot 3 above described was retransferred within several days following the date of receipt. This lot was initially caused to be transferred to the National Bank of Mattoon as trustee of the decedent. Because the request for conveyance by decedent to the Bank and the Bank's resolutions therefor were not demanded by any of the owners until a conveyance by a subsequent purchaser, such documents were not filed until recently which caused Stella Davis to believe that her father should have some interest therein. This of course was not true. Lot 1 was a vacant lot on the outskirts of Mattoon worth only $200.00 or $300.00 which was conveyed to M. W. Flack, September 29, 1947.

All other specified assets or information concerning them have been thoroughly investigated, and no additional assets have been discovered.

Stella Davis has been speaking generally for the other heirs, and at her specific request no inventory has been filed nor has any distribution been made of the bonds issued jointly to the decedent and his heirs.

14 In order to procure funds for the support of the mother we did prepare an appraisement, and caused a widows award to be made and paid to the widow.

We have also procured from the Attorney General and State Treasury Officers authority to transfer the accounts, bonds, and stocks, and to open the safety deposit box. In

addition to the foregoing and in view of Stella Davis' insistance that other bonds existed, information was subsequently secured from the Treasury Department which completely corroborated, (according to Stella Davis since I have not seen the list) our list of the bonds inventoried. Stella Davis still insists that there are other assets, but is unable to give us any specific information by which we might ascertain their existence. We have spent many hours and days with her and her sisters discussing at great length all of the history of this case including in particular a discussion of assets and liabilities. We had wanted to file an inventory of all the known assets, to open the deposit box containing certain of these assets, see the securities which can not be distributed in kind, transfer such assets which are required to be transferred to the account of the administrator, distribute the bonds which can be turned over to the several heirs, turn over to Stella Davis or designated agent of the several heirs the miscellaneous papers, and file a current or final account. Miss Davis insisted that we not file an inventory until we knew we had uncovered all of the assets, and thus has held up the filing of such documents, since we did not wish to insist upon filing it without giving her a full and complete opportunity to uncover or furnish information for the uncovering of all possible assets of the estate.

Miss Davis has the key to the lock box and was to have met the writer and the trust officers of the Mattoon Bank Saturday morning, November 17th for the purpose of removing the contents of the lock box, and proceeding with the administration of the estate. She called the writer Friday evening, November 23rd, and insisted that she wanted to file some objection to an inventory. I could get no specific information from her, and in view of her refusal to proceed to Mattoon Saturday morning for the purpose of opening the deposit box did not so meet her.

She advised me Saturday morning that she had telephoned you, and that you would assist her in filing some type of petition, the exact nature thereof being unknown to me.

I have advised Stella Davis, after conferring with the Bank, that if she would proceed to cooperate so that we could procure the contents of the lock box and distribute them, transfer such accounts as required the same to the account of the administrator, sell such assets as must be sold for the purpose of completing preliminary administration of the estate, and filing an account, the Bank would be willing to resign as administrator for the estate, and permit her and one or more of her sisters to be appointed as administrator for the purpose of continuing any further investigation into alleged assets of the estate. If she will do this the Bank will be perfectly willing to resign in her favor, and I will be just as willing to resign as attorney for the administrator, and permit you or any other attorney to represent the new administrator or administrators.

I advised Stella Davis Saturday morning that I would write you immediately giving you a resume of this case, that she would have until November 26th within either to meet at the Bank with the key to open the lock box so that we might proceed with the administration of the estate, or I would be required to request an order from the County Court for that purpose.

I have been and am willing to expend all the time which is necessary in investigating any aspects of any evidence in connection with this estate upon which I have information, for the purpose of uncovering any assets. In view of the information thus far furnished, and the arduous investigation thus far made, I sincerely believe that there are no additional assets. I trust that you will write me immediately so that I will know whether the lock box can

be opened at any early convenient date, or whether it will be necessary that a petition for the purpose of accomplishing this be filed.

Very truly yours,
Foreman & Meachum
/s/ Ray M. Foreman
By Ray M. Foreman.

RMF:hls
CC Stella Davis
National Bank of Mattoon
Leroy J. Neiman

16-17 • • •

18

(Letterhead of Foreman & Meachum)

January 17, 1952

Mrs. Stella C. Davis
1217 Carmen Avenue
Chicago, Illinois

Re: Estate of William Daviditis

Dear Madam:

Pursuant to the request made by you and your sister, Mrs. Marie Myers, on the date of our last conference at Mattoon, Illinois, we are enclosing a copy of the statement of M. F. Behrend, Vice President of The National Bank of Mattoon, Mattoon, Illinois, relative to certain transactions and proceedings at Mattoon and Charleston, Illinois, during the month of October, 1949. We understand that you have heretofore received a copy of this statement from Mr. Bauer of The National Bank of Mattoon, but are enclosing this copy for you and also a copy to each of your several sisters.

We are also enclosing, pursuant to your request, a photostatic copy of check issued by the Equitable Life

Assurance Society of the United States under date of February 15, 1946, payable to William Daviditis, in the sum of $12,769.80; and also photostatic copies of check issued by Wayne O'Bryan under date of January 26, 1946, payable to William Daviditis, in the sum of $1,000.00, and check issued by Wayne O'Bryan under date of February 15, 1946, payable to William Daviditis, in the sum of $3,000.00. The Equitable Life Assurance Society check together with the check for $3,000.00 executed by Wayne O'Bryan of Champaign County, Illinois, constituted the balance of $15,800.00 payable to William Daviditis as the balance of the initial amount of $16,800.00 on the sale of the farm in Champaign County. The difference between the balance of $15,769.80 and $15,800.00 comprised expenses for Federal Transfer Taxes and abstract costs in the sum of $30.20. The photostatic copy of The Equitable Life Assurance Society check was forwarded to us with no billing for the cost thereof as of the present date. This conforms with the complete detailed statement of this transaction submitted to us under date of July 25, 1951, by Mr. David F. Hubbard of The Equitable Life Assurance Society, which explanation has heretofore been given you on several occasions. We trust that this will thoroughly satisfy you as to the completion of that transaction.

19 Mrs. Stella C. Davis

January 17, 1952

We have received a letter from Elliot W. Seymour, attorney at law, San Francisco, California, advising that there is presently a balance in the account of William Daviditis in the Anglo-California National Bank of San Francisco in the sum of $300.00. We have written this bank for confirmation of this amount and as soon as such confirmation is received the necessary documents will be

forwarded to the bank for transfer of that account to the account of the administrator.

Mrs. Seymour has also sent us his statement for attorney fees for work and services rendered to you and the several heirs of the decedent in the sum of $250.00. These services probably comprise a direct charge against you and the other heirs who employed him. However, in view of the fact that these services were rendered to all of the heirs it would probably be satisfactory to have an allowance made in the estate. We will not be able to do this unless we receive the consent of the several heirs to this procedure. May we suggest that in your reply to this letter you advise if it is satisfactory for us to allow a claim of Mr. Seymour for services rendered to the heirs in the probate proceedings. If so, we shall have Mr. Seymour file his claim and then permit the court to pass upon the allowance as to the amount thereof. It is possible that the court might not see fit to allow the full amount of this claim.

Very truly yours,
Foreman & Meachum
/s/ Ray M. Foreman
By Ray M. Foreman

RMF:V
Encls.
cc: Matilda Marion
Marie Myers
Betty Horrigan

20 THE NATIONAL BANK OF MATTOON
Mattoon, Illinois

The National Bank of Mattoon, With Reference to Certain Transactions of William Daviditis During the Year 1949.

The writer is 52 years of age and has been employed by The National Bank of Mattoon for the past 35 years continuously.

During that time I became very well acquainted with William M. Daviditis, who was a long time customer of ours. I waited on him many times at the window, and he frequently in later years sought my advice and counsel on financial matters.

As near as I can recall, it was during the month of September in 1949, Mr. Daviditis came in and consulted the writer. At that time he was having serious family troubles at home. He was very angry at his daughters, and said that he was going to cash all of the bonds he had so as to keep them from getting any of his money. The writer told him that he would gain nothing by cashing the bonds, because the children, his daughters, could attach cash as well as bonds. It happened that our attorney, Mr. George Gilkerson, was in the bank and I recall calling him over to my desk and we counselled with Mr. Daviditis against cashing out his bonds. He was so angry though, that we accomplished nothing, and he took the money for the bonds, and as near as I can recall it was approximately $15,000, and left the bank.

The next thing that I knew, a few hours later, I was informed that the daughters had sworn out a warrant for his arrest as he had made a display of a large check in a local tavern. The police picked him up and locked him up in jail. I believe that Ralph Suddes was the attorney who represented the girls and had his arrested.

The writer went over to the jail about 5 o'clock in the evening and talked to Mr. Daviditis, who was locked in the cell. He was a raving maniac. He would jump up and down and cursed his daughters and wife to everything under the sun, and swore up and down they would never get a dime of his money. After talking with him

for about an hour, I managed to get him cooled down and he agreed to give me all of his money, which he did. I then made arrangements to have the police magistrate come down and let him plead guilty to a disorderly charge, and got him released from jail. I took him personaliy over to the Plaza Hotel, here in Mattoon, and made arrangements with the management to give him a room and provide a place for him to stay so that until he could get his affairs at home straightened out and could return to his home.

21 Mr. Daviditis then had W. K. Kidwell, a local attorney, represent him and after a great deal of haggling, the family affair was straightened out and Mr. Daviditis agreed to set up a trust fund for the benefit of his wife and she was to go and live with one of the daughters. The trust fund provided that the trustee pay Mrs. Daviditis a fixed sum each month. The bank was appointed as the Trustee under the Trust Agreement.

During this time, Josephine Daviditis the wife of William, had brought a suit in the city court and under date of October 12, 1949, Judge Jacob Berkowitz, judge of the city court of the city of Mattoon, entered an order striking complaint for separate maintenance and modifying temporary injunction. This order directed The National Bank of Mattoon to deliver to William Daviditis, the sum of $15,000 and we have in our possession, a receipt dated October 13, 1949, signed by William Daviditis, acknowledging receipt from The National Bank of Mattoon the sum of $1500 in the following form. $950 was in Traveler's Checks issued to Mr. Daviditis that he had on his person at the time of his arrest, and which he gave to us to hold for him, and $550 in currency. We also gave him postal savings certificates No. 09122, in the amount of $100 and No. H5446 in the amount of $200. This was delivered to him at a later date on November 16, 1949. The records of the National Bank of Mattoon showing the

checking account maintained by Mr. Daviditis in this bank on October 13, 1949 deposited to his checking account the sum of $15,110.00. This is the balance of the money that he left with us and represented by Cashier's Check on the Central National Bank of Mattoon, which Mr. Daviditis purchased on the day that he cashed the bond at our bank he went down to the other bank and purchased this check. On November 18, 1949 the records further show that Mr. Daviditis wrote a check for $8,000 and this was the check that was deposited under the Trust Agreement mentioned before in this letter. The records further show that of November 19 there was a $5,000 check and that one was deposited in the Mattoon Federal Savings and Loan Association.

I could get ample proof of his actions and what he said regarding his daughters over at the police station because there were about five or six policemen there at the time, as well as Mr. James Warren, the city clerk. They were afraid I was going to get hurt to go in that cell with that wild man, for he certainly was wild, with
22 anger at his daughters. If they think I have exaggerated what he said about them, all they need to do is have me get the policemen and Mr. Warren and I know that they would substantiate every comment I have made. Also the records of the hotel, which was operated by Dwight Hawkins, who is now the township supervisor, could be furnished them to show that we took care of their father when it was not possible for him to go to his own home. With kindest personal regards, and I appreciate your position in this case, especially after talking with Mr. Bauer, I am,

Very truly yours,
/s/ M. F. Behrand
M. F. Behrand
Vice President

23-24 • • •

25 Summons in a Civil Action Marshal's Civil No. 1929

UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

Apr 2 1957
Received

United States Marshal
Eastern District of Illinois

SUMMONS
(Filed Apr 3—1957)

To the above named Defendant: The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation.

You are hereby summoned and required to serve upon Josephine Daviditis, Pro se, Stella C. Davis, Pro se, plaintiffs, whose addresses are 4916 N. Magnolia Ave., Chicago, Ill. and Betty Horrigan, Pro Se, 1303 Carmen Ave., Chicago, Illinois an answer to the complaint which is herewith served upon you, within Twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

D. H. Reed
Clerk of Court.
Verna Peck
Deputy Clerk.

Date: March 26th, A.D. 1957

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

25A RETURN ON SERVICE OF WRIT
(Filed Apr 3 1957)

I hereby certify and return, that on the 26th day of March, A. D. 1957, I received this summons and served it together with the complaint herein as follows: on the therein named, The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation by handing to and leaving a true and correct copy thereof with John W. Sheeks, Vice President of the within named The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation; said service being made at 1:50 P.M. at the National Bank of Mattoon, Mattoon, Coles County, Illinois on the 28th day of March, A.D. 1957.

Vernon Woods
United States Marshal.
By /s/ Willard Corcoran
Deputy United States Marshal

Marshal's Fees
Travel $16.00
Service 2.00
$18.00

Subscribed and sworn to before me a .....this ..... day of ..... 19 .....

(Seal)

26

UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

MOTION TO DISMISS
(Filed Apr 17 1957)

The National Bank of Mattoon, defendant, by Ray M. Foreman, Clyde Meachum and Kenneth H. Clapper, its

attorneys, moves that the complaint in the above entitled cause be dismissed, and in support thereof states as follows:

1. The court does not have jurisdiction of the alleged cause of action in that the complaint fails to disclose, or properly allege, any basis for Federal jurisdiction.

Wherefore, defendant moves that the complaint in the above entitled cause be dismissed at plaintiffs' cost, and that an order also be entered, striking the complaint from the records of this court, for the reason that said complaint contains scandalous recitations and allegations, which are untrue and should not be permitted to become or remain a part of the permanent records of this court.

National Bank of Mattoon, defendant, by
Ray M. Foreman, Clyde Meachum and
Kenneth H. Clapper, Its Attorneys,
By /s/ Ray M. Foreman
Ray M. Foreman

Foreman, Meachum
& Clapper,
Attorneys at Law
708 Baum Bldg.
Danville, Illinois

27-31 • • •

32

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

PLAINTIFFS REPLY BRIEF TO DEFENDANT'S MOTION TO DISMISS AND AFFIDAVITS IN SUPPORT OF PLAINTIFFS REPLY BRIEF.

(Filed May 13 1957)

The defendant, The National Bank Of Mattoon, by its attorneys, Ray M. Foreman, Clyde Meachum, and Ken-

neth H. Clapper, in the Motion To Dismiss on page 2 of said motion, state "the mere assertion in a complaint that the case is one arising under the Constitution and Laws of the United States, or involving construction or application of Federal Law, does not give the District Court jurisdiction to entertain the suit," in this cause of action does not apply because the Complaint For Damages Resulting For Fraud filed by the plaintiffs, Pro Se under Section 1331 of U.S.C. 28 does involve the Constitution of the United States, and violations of its provisions and violations of other Federal Laws by the defendant, The National Bank of Mattoon, Illinois and other named persons in the body of the complaint of the above entitled cause of action. The plaintiffs hereby state their reasons for Jurisdiction in the United States District Court and base same on the following:

1 That in the annexed Exhibit "A" to the plaintiff's complaint on pages 1 and 2 of this letter by Ray M. Foreman, Assistant United States Attorney to Mr. Edward W. Parlee, dated November 20, 1951, portrays the Fraud, Conspiracy and fraudulent misrepresentation by both the above mentioned attorneys, Mr. Foreman, and together with his assistant Mr. Clapper and the National Bank of Mattoon, Illinois in unlawful search for assets and property without an Court Order, an State inheritance Tax man and an Internal Revenue representative being present in said bank on the 3rd day of April, 1951,
33 when this violation of the State of Illinois Probate Act and the violation of their Constitution rights under the 14th Amendment to the Constitution and their Civil Rights under U.S.C. 18 sec. 241, and Amendment V and IV by unlaw Searches of their father's and husbands assets and valuable and property. That Article IV section 2 to the Constitution was violated by an employee, Elizabeth McVey, when the plaintiffs became aware

of this Fraud and Conspiracy by the National Bank of Mattoon, aided and abetted by Foreman, and Mr. Clapper and other unnamed persons, left the State of Illinois, in order to avoid giving testimony regarding this fraud and conspiracy upon the plaintiffs.

That due to the "Color of Office" as an United States Officer and officer of the Justice Department", Ray M. Foreman was immune to State Law and to be prosecuted by same. This was also a constitutional violation.

Dated this 11th day of May, 1957 A.D.

Respectfully submitted,

/s/ Josephine Daviditis
Josephine Daviditis, Pro Se
4916 N. Magnolia Avenue,
Chicago, Illinois

/s/ Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia Avenue,
Chicago, Illinois

/s/ Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Avenue,
Chicago, Illinois

34 Stella C. Davis, Pro Se
4916 N. Magnolia Avenue,

State of Illinois)
City of Chicago) ss.
and County of Cook)

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

AFFIDAVIT OF SERVICE BY MAIL
(Filed May 13 1957)

Stella C. Davis, being first duly sworn upon oath, states that she served copies of the foregoing Reply Brief To

Defendant's Motion To Dismiss and Affidavits In Support of Plaintiff's Reply Brief, by Stella C. Davis, and Betty Horrigan on: The National Bank of Mattoon, via certified mail No. 830819, and a copy of same on the Law Firm of Foreman, Meachum & Clapper to 31 N. Vermilion Street, Baum Building, Danville, Illinois, and to the National Bank of Mattoon, Broadway, Mattoon, Illinois, by depositing same in the United States Mail in the properly stamped and addressed envelope on the 11th day of May, 1957 A.D. Foreman, Meachum & Clapper's Law Firm was sent via certified mail No. 830820.

By /s/ Stella C. Davis
Stella C. Davis

Subscribed and sworn to
before me this 11th day of
May, 1957.
Norman Sax
Notary Public
My commission expires 1-16-60.

35-48 • • •

49 Stella C. Davis, Pro Se
4916 N. Magnolia Avenue,
Chicago, Illinois
and
Betty Horrigan, Pro Se
1303 Carmen Avenue,
Chicago, Illinois

State of Illinois
City of Chicago } ss
County of Cook

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil Action No. 1533-D) * *

AFFIDAVIT IN SUPPORT OF COMPLAINT FOR DAMAGES RESULTING FROM FRAUD AND EXHIBITS ANNEXED THERETO

Stella C. Davis, and Betty Horrigan, being first duly sworn, deposes and says:

That at all times therein mentioned they have been and now are residents of the City of Chicago, State of Illinois, and that they make this Affidavit in Support of Complaint for Damages Resulting from Fraud, in the cause of action on file herein.

That on the 3rd of April, 1951, following the graveside services for their late father, I, Betty Horrigan and I, Stella C. Davis, together with my sister Marie Myers met Ray M. Foreman and Mr. Clapper in the National Bank of Mattoon, Mattoon, Illinois upon their instructions the evening of the 2nd of April, 1951. They were sitting at a desk with a lot of records on this desk and it is our belief that one of them at that table was a bank official. Ray M. Foreman, with the consent of the National Bank of Mattoon, Mattoon, Illinois, and in the
50 presence of its officials and employee, Elizabeth McVey and Mr. Bauer had the safety deposit box #932 of their late father opened on April 3, 1951, shortly after the funeral of their father, a long time customer of said bank, and that he Mr. Foreman took the contents out of said box himself, listed them with the aid of Elizabeth McVey, an employee. That Mr. Foreman was an United States Assistant Attorney, on a government work-

ing day without a court order, administrator, petitioned, nominated or appointed-qualified, together with the officials of the National Bank of Mattoon, Illinois permission and aided by Mr. Clapper made unlawful SEARCHES, of the assets, property accounts, trusts and valuables of William Daviditis, alias William Davis. The annexed letter Exhibit "B2" dated January 7, 1952 from E. C. Bauer, Trust Officer, to Mrs Betty Horrigan portrays the Fraud, Deceit, Criminal Conspiracy and violations of the heirs-at-law and widow of the decedent's Civil Rights and Rights under the Constitution of the United States. We quote portions of the letter, "in the case of your father's estate you will recall that you girls came into the bank with Mr. Foreman to discuss the Administration of your father's estate and agreed before leaving that you wanted us to act as administrator", is false. We did not go into the National Bank of Mattoon, Mattoon, Illinois on April 3, 1951, to ask for an administrator, nor did we walk into the bank with Mr. Foreman. He was already in the bank making unlawful SEARCHES of our father's assets, accounts and etc.. That we came into the bank on said date on the instructions of Mr. Foreman to open our father's safety deposit box only, that we did not talk to any of the bank officials or employees about an administrator about our father's estate nor did we ask the National Bank of Mattoon, Mattoon, Illinois to become the administrator of our father's estate in view of the fact that there had been so much trouble and legal violations of (my) our mother's rights as a wife in the City of Mattoon, Court, County of Coles, State of Illinois in case #40-C-50 wherein the National Bank of Mattoon, were defendants in this case and our mother a plaintiff. That the National Bank of Mattoon and its officials were antagonists to us the heirs-at-law and the

widow of William Daviditis, alias William Davis, deceased:

51 That during this time, unbeknown to Stella C. Davis and Betty Horrigan, that the National Bank of Mattoon, Illinois, its officials and its employee, Elizabeth McVey were conspiring together with Mr. Foreman and Mr. Clapper to have the bank become administrator of the estate of their father. That since both I, Stella C. Davis, and I, Betty Horrigan, went to the Federal Bureau of Investigation in the year 1950, and turned in the National Bank of Mattoon, Illinois for investigation upon our complaints against it and their officials, they were conspiring with Ray M. Foreman, who was impressing them with his high position of an "Officer of the United States and of the Justice Department" and that the F.B.I. and other governmental agencies were aiding Mr. Foreman in the search of their father's missing assets and investigating irregularities which transpired in 1949 regarding the National Bank of Mattoon, local politicians, attorneys and other unnamed persons complained to the F.B.I.

That the National Bank of Mattoon, its officials and employee, Elizabeth McVey, together with Ray M. Foreman, Assistant United States Attorney and Mr. Clapper by duress, coercion and misrepresentation by fraud and conspiracy obtained the signature of Stella C. Davis, in her hotel room a short time after opening and listing the contents of the decedents, Wiiliam Daviditis, alias William Davis deposit box in said bank. That Elizabeth McVey was not physically present in their hotel room to witness said signature to a petition which Mr. Foreman brought from his county and city, it being on a Vermilion County Form, whereas the National Bank of Mattoon, having a Trust Department and under the law is qualified to act as administrator had forms of it's own. This portrays the fraud that was perpetrated upon the heirs-at-law who were

not themselves and who were not in their normal state of mind due to the fact that they had just buried their father and had brought his body all the way from San Francisco, California, that the burial was delayed from March 25, 1951, when he died to April 3, 1951 due to the difficulty regarding the funeral, shipment and other harassments entailed in this procedure. The annexed Exhibit "A5" portrays the conspiracy and fraud perpetrated upon the 52 heirs-at-law. This letter from Dierks Funeral Directors, 901 Divisadero Street, San Francisco, California, to Miss Stella C. Davis, 1217 Carmen Avenue, Chicago, Illinois, mailed on April 3, 1951, exemplifies the confusion and torture that Stella C. Davis and Betty Horrigan went through to get their father buried. That the attorney, Ray M. Foreman, whom the National Bank of Mattoon, Mattoon, Illinois, who knew that he was also representing the plaintiff's and their mother, got credit for something he claimed he did but this letter proves that he didn't do what he repeatedly stated and that Elliot W. Seymour got credit for something he stated was true but was false instead.

The annexed exhibit "A2", M. F. Behrend, trust officer of the National Bank of Mattoon, Illinois, dated August 24, 1951, to Josephine Davis, 1217 Carmen, Chicago, Illinois, shows the position this official took in this case wherein he picked up our late father's money, bonds and valuables in the City Jail of Mattoon, County of Coles, Illinois on September 9, 1949 and now in a fiduciary position due to the fraud and conspiracy of the above named persons and institutions. That he was most insulting to the heirs-at-law before and after their father's death and to the widow of the decedent.

by /s/ Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia Ave.,
Chicago, Illinois

by /s/ Betty Horrigan,
Betty Horrigan, Pro Se
1303 Carmen Avenue,
Chicago, Ill.

State of Illinois }
County of Cook } ss.

Subscribed and sworn to before me
this 18th day of May, 1957 A. D.,
/s/ Norman Sax
Notary Public
My commission expires 1-15-60
(Seal)

53-57 • • •

58 (Letterhead of

THE NATIONAL BANK OF MATTOON)

August 24, 1951

Josephine Davis
1217 Carmen Avenue
Chicago, Illinois

Dear Mrs. Davis

Enclosed find our check as Administrator of your late husband's estate, payable to your order in the amount of $1800.00. This is in full payment of the widow's award as allowed you by the court.

Yours very truly,
/s/ M. F. Behrend
M. F. Behrend
Trust Officer

MFB:jt
Encl.

59

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil Action No. 1533-D) • •

State of Illinois
City of Chicago, County of Cook } ss.

AFFIDAVIT OF SERVICE BY MAIL
(Filed May 20, 1957)

Stella C. Davis, being first duly sworn upon Oath, states that she served copies of the foregoing Affidavit in Support of Complaint For Damages Resulting From Fraud and Exhibits Annexed Thereto upon The National Bank of Mattoon, Mattoon, Illinois, via certified mail #296499 together with A Supplement To Affidavit In Support of Plaintiff's, Stella C. Davis, Reply Brief To Defendant's Motion To Dismiss and both above mentioned documents upon their attorneys Foreman, Meachum, and Clapper Law Firm via certified mail 915979 by mailing same in the United States Mail to Foreman, Meachum & Clapper Law Firm, Baum Bldg., 31 N. Vermilion, Danville, Illinois, and to The National Bank of Mattoon, Mattoon, Illinois, Broadway, in a properly addressed and stamped enveloped.

by /s/ Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia Avenue,
Chicago, Illinois

Subscribed and sworn to
before me this 18th day of May, 1957 A.D.
/s/ Norman Sax
Notary Public
My commission expires 1-16-60
(Seal)

60-72 • • •

73 State of Illinois } ss.
County of Coles }

In the City Court of the City of Mattoon, Illinois
In Equity No. 49-C-50

Josephine Daviditis, also known as Josephine Davis,
Plaintiff

—v.—

William Daviditis, also known as William Davis, and the National Bank of Mattoon, Mattoon, Illinois,
Defendant

ORDER FOR INJUNCTION WRIT

It is ordered by the Court that the People's Writ of Injunction issue as pleaded for in said Complaint against the said William Daviditis also known as William Davis and against the National Bank of Mattoon, Mattoon, Illinois, their servants and agents, without bond and without notice restraining and enjoining him, the said William Daviditis from disposing of the $43,000 in cash he now has on his person in any manner, from entering upon or into the lock box now located in said National Bank of Mattoon, Mattoon, Illinois, or disposing of the property now located therein, and from disposing of, or encumbering the real estate now owned by said William Daviditis also known as William Davis described as Lot 5, Block 7 Jonte's Addition to the City of Mattoon, Coles County, Illinois and from entering upon said premises and from molesting or harming the said Josephine Davis whose true name is Josephine Daviditis, until the further order of this Court.

Enter: This 9th day of September, 1949.

/s/ Jacob Bertonk
Judge

74-80 • • •

81

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil No. 1533-D) * *

ORDER

(Filed—Jun. 3, 1957)

The defendant, the National Bank of Mattoon, Mattoon, Illinois, a banking corporation, presents a motion to dismiss the plaintiffs' claim for relief for lack of jurisdiction.

Plaintiffs have filed in addition to their claim for relief lengthy affidavits setting forth involved transactions with the defendant and a motion for production of documents. The claim for relief does not comply with Rule (8)(a) of Federal Rules of Civil Procedure which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." It is difficult for this court to determine exactly what is the basis of the plaintiffs' claim for relief.

In substance the plaintiffs' complaint appears to be a suit for fraudulent action by the defendant bank in wrongfully opening a certain safety deposit box with the
82 consent of the Attorney General of the State of Illinois and wrongfully doing certain acts as administrator and trustee relating to the probate and distribution of the estate of William Daviditis, also known as William Davis, deceased. Plaintiffs alleges that this was in violation of the Federal Deposit Insurance Act as provided in Title 12 U.S.C. §1818 and that the plaintiffs were deprived of equal protection of the federal laws and guarantee of due process under the Constitution of the United States.

This court does not have jurisdiction of the case by reason of Section 1818, Title 12 having been violated. Said §1818 provides for termination of the bank's status as an insured bank and has no connection with the facts alleged showing that the pleader is entitled to relief. The aver-

ments of the claim for relief must show a real and substantial federal question to bring the action within Section 1331, Title 28. Blumenstock Bros. Adv. Agency v. Curtis Pub. Co., 252 U.S. 436, 64 L. Ed. 649.

Plaintiffs also attempt to allege a claim for relief on the basis of deprivation of constitutional or civil rights under Title 42 U.S.C. §1981 et seq. Clearly, plaintiffs do not come within §1981 which gives a right of action where the plaintiff has been denied equal protection of the law. Plaintiffs do not allege any facts to show discrimination against them on account of race, color or creed. Under §1983, Title 42 plaintiffs are required to aver that the de-

fendant bank acted under color of "any statute, ordi-
83 nance, regulation, custom or usage of any state."

Studio Carpenters Local Union No. 946 v. Loew's, Inc., 182 F. 2d 168; cert. denied 340 U.S. 828, rehearing denied 340 U.S. 885; Thompson v. Baker, 133 F. Supp. 247. Color of law is a misuse of power possessed by virtue of state law. It is made possible only because the wrongdoer is clothed with authority of state law. United States v. Classic, 313 U.S. 299, 326. There is no allegation in the claim for relief that the defendant bank acted under color of law. In fact the complaint alleges tortious acts of the bank in its individual capacity. Mere conclusions of the pleader that they were deprived of due process of law is insufficient. William v. Miller, 48 F. Supp. 277; affirmed 317 U.S. 599. The plaintiffs have not set forth a sufficient statement of fact to allege that there was a conspiracy to deprive the plaintiffs of rights or privileges as defined in §1985(3), Title 42 U.S.C. They do not allege a conspiracy to deprive them of equal protection of the law or equal privileges or immunities under the law. Said subsection (3) does not protect the rights of citizens to due process. Dunn v. Gazzola, 216 F. 2d 709; Bottone v. Lindsley, 170 F. 2d 705, cert. denied 336 U.S. 944.

From the facts alleged it is obvious that the plaintiffs are dissatisfied with the administration of an estate in the state court. This does not give rise to a cause of action under the Civil Rights Act. Nothing in the Civil Rights Act gives the federal court jurisdiction to review fraudulent or erroneous decisions of the state court. Moffett v. Commerce Trust Co., 187 F. 2d 242, cert. denied 342 U.S. 818.

84 Since the plaintiffs have alleged only a tortious action against the defendant bank it is necessary for them to allege diversity of citizenship to give this court jurisdiction of the subject matter. This they have not done, and in fact it is clear that the plaintiffs are citizens of Illinois as well as the defendant bank.

There is no alternative for this court but to dismiss the action for lack of jurisdiction of the subject matter.

It Is So Ordered.

Entered this 3rd day of June, 1957.

/s/ Casper Platt
United States District Judge

85

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

PETITION TO REVIEW AND VACATE ORDER FILED JUNE 3rd, 1957, A.D. AND AFFIDAVIT IN SUPPORT THERETO

(Filed Jun 13 1957)

The petitioners, Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Pro Se, state that an Order entered on June 3rd, 1957 A.D. in said District Court by Honorable Casper Platt, District Judge, dismissing the cause of action in the above entitled case, was predicated upon the petitioners without "Notice" and "Hearing" and in violation of the "Due Process of Law".

That the petitioners were denied the opportunity to be heard, to have their day in Court, and to protect their "Rights" which the "Due Process of Law" provision of the 14th Amendment to the Constitution and the 5th Amendment which guarantees to every person his day in Court and reasonable Opportunity to be Heard or Defend and it requires orderly proceeding in competent tribunal in accordance with generally established Rules not violative of fundamental rights, case of Rosenblum v. Rosenblum, 1943-42 New York 5 2d 626-181 Misc. 78.

That the petitioners, Stella C. Davis and Betty Horrigan, Pro Se (on the 31st day of May, 1957, A.D.) personally appeared and filed Civil Action No. 1533-D, Motion for Production of Documents and etc. Pursuant to Rule 34 of F.R. of Civ. P. and Affidavit In Support of Complaint For Damages Resulting From Fraud and Plaintiff's Reply Brief and Exhibits Annexed Thereto, in the District Court for the Eastern District of Illinois, in the City of Danville, County of Vermilion, and that the petitioners, Stella C. Davis, and Betty Horrigan, examined the file in the above entitled cause of action and did not see a "Notice of Hearing" or any other document in the file indicating a
86 Hearing scheduled for the 3rd day of June, 1957, A.D.

That the said Order issued by the United States District Court was post marked June 4, 1957, 2:30 P.M., Danville, Illinois, and that this Order issued by the Honorable Casper Platt, United States District Judge was a Surprise to the petitioners without Notice and Hearing and a direct violation of the "Due Process of Law" and their Rights under the 14th and 5th Amendment to the Constitution.

Wherefore: Petitioners pray:

1. That said Order may be reviewed, and reversed and declared null and void.

2. That the National Bank of Mattoon, defendant may be enjoined and restrained from proceeding to enforce said

Order and that issuance of execution thereunder may be stayed.

3. That the petitioners may have their day in Court and a Hearing to protect their Rights and a Trial by Jury as asked for in their Complaint filed in the United States District Court.

And may it please the Court to order personal notice to The National Bank of Mattoon, defendant to appear before the Court at a time and place named by the Court therein to show cause why such review and reversal of Order issued by the Court should not be declared null and void.

Respectfully submitted,
By Josephine Daviditis
Josephine Daviditis, also known as
Josephine Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.
By Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.
By Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Avenue, Chicago, Ill.

AFFIDAVIT IN SUPPORT THEREOF

State of Illinois
City of Chicago, County of Cook } ss.

Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, being first duly
87 sworn, says that the facts and allegations therein contained are true.

Dated this 12th day of June, 1957 A.D.

By Josephine Daviditis
Josephine Daviditis, also known as
Josephine Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.

By Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.

By Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Avenue, Chicago, Ill.

State of Illinois }
City of Chicago, County of Cook } ss.

Subscribed and sworn to before me
this 12th day of June, 1957, A.D.

/s/ Maurice Kelman
Notary Public

My commission expires 1st Feb. 1959
(Seal)

88

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1533-D) • •

AFFIDAVIT OF SERVICE BY MAIL

Stella C. Davis, being first duly sworn upon oath, states that she served copies of the foregoing Petition to Review And Vacate Order Filed June 3rd, 1957, A.D. And Affidavit In Support Thereto on The National Bank of Mattoon, Mattoon, Illinois, via Certified mail No. 730887, and to the Law Firm of Foreman, Meachum & Clapper, 41 N. Vermilion, 708 Baum Bldg., Danville, Illinois, certified mail No. 723800, by depositing same in the United States Mail

in the properly stamped and addressed envelope on the 12th day of June, 1957, A.D.

By Stella C. Davis
Stella C. Davis,
4916 N. Magnolia Ave.,
Chicago, Ill.

State of Illinois
City of Chicago, County of Cook } ss.

Subscribed and sworn to before me
this 12th day of June, 1957, A.D.

/s/ Maurice Kelman
Notary Public

My commission expires 1st Feb. 1959
(Seal)

89

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil No. 1502-D, 1533-D)

ORDER
(Filed June 14, 1957)

Plaintiffs Stella C. Davis, Betty Horrigan and Josephine Daviditis, also known as Josephine Davis, present petitions to vacate two Orders issued by this court on June 3, 1957 which dismissed two suits filed by plaintiffs because this court had no jurisdiction thereof. The plaintiffs assert that the orders of dismissal were contrary to due process of law because they were afforded no notice or hearing.
90 The claim of denial of due process of law is capricious. After the defendants filed motions to dismiss in the above suits the plaintiffs filed reply briefs and affidavits. In the suit brought against Ray M. Foreman, Kenneth Clapper and Clyde Meachum the defendants moved

to strike the plaintiffs' reply briefs, to which the plaintiffs filed in reply an affidavit. Rule 6(b) of this court provides as follows:

> "Any party desiring oral argument shall make appropriate note thereof upon the cover page of his brief. The court may, of its own motion direct oral argument to be had. If oral argument is requested or ordered it shall be heard at such place within the district as the judge may designate regardless of where the cause is pending. Unless otherwise ordered, all such matters shall be taken as submitted for decision on the briefs filed following the expiration of the time for filing the reply brief if oral argument is not requested and ordered, in which latter event, the matter shall be taken as submitted for decision upon the conclusion of the oral argument."

At no time did plaintiffs request oral argument. Consequently the matters raised by the motions presented by defendants were decided on the pleadings, briefs and affidavits.

In order to do substantial justice the court will, and hereby does, grant the petitioner the right to have oral argument on the petitions to vacate.

The plaintiffs have requested in their motions the appointment of counsel at a fair and reasonable fee. This is denied. The plaintiffs have advanced no grounds to support their request. Plaintiffs are evidently financially
91 able to employ counsel, since they state counsel should be appointed "at fair and reasonable fee." The court has no authority to choose counsel for plaintiffs. The lawyers admitted to practice in this court are honest, reliable, capable and are ready and willing to serve litigants at a reasonable fee. Plaintiffs should employ their own counsel to represent them in these suits unless they desire to appear pro se.

It Is Ordered that the parties appear for oral argument on the petitions to vacate on July 5, 1957, 10 a.m., D.S.T., in Danville, Illinois.

Entered this 14th day of June, 1957.

Casper Platt
United States District Judge

92 • • •

93

IN THE UNITED STATES DISTRICT COURT

• • (Caption—Civil No. 1502-D, 1533-D) • •

ORDER
(Filed Jul 5 1957)

Now comes the plaintiffs, Stella C. Davis, Betty Horrigan and Josephine Daviditis, also known as Josephine Davis, pro se, and present their petitions to vacate two orders issued by this court on June 3, 1957, dismissing the above mentioned suits, and comes the defendants, Foreman, Meachum and Clapper and The National Bank of Mattoon by Kenneth Clapper in opposition thereto. The court being fully advised in the premises and after oral argument finds that the motions to dismiss should stand and the petitions to vacate denied.

It Is Hereby Ordered that the petitions to vacate the two orders dismissing the above mentioned suits be, and they are hereby, denied.

94 It Is Hereby Further Ordered that the orders entered on June 3, 1957 dismissing the above mentioned suits shall stand.

Entered this 5th day of July, 1957.

Casper Platt
United States District Judge

95-96-97 • • •

98

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil No. 1533-D) * *

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS PURSUANT TO RULE 73(b) of F.R. of C.P.

(Filed Jul 19, 1957)

Notice is hereby given that Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Pro Se, plaintiffs-appellants above named, hereby appeal to the United States Court of Appeals for The Seventh Circuit from the Order entered on the 5th day of July 1957, A.D., in The United States District Court for the Eastern District of Illinois, by the Honorable Casper Platt, United States District Judge, that the petition to vacate the Order entered in said court on the 3rd day of June, 1957, A.D., be denied (to dismiss the above mentioned suit) and that the Order entered on the 3rd day of June, 1957, A.D. dismissing the cause of action for lack of jurisdiction of the subject matter shall stand as ordered.

That a transcript of the record proceedings, together
99 with Exhibits and Affidavits and Evidence be prepared by the clerk of the District Court for transmittal to the United States Court of Appeals for The Seventh Circuit.

Dated this 18th day of July, 1957, A.D.

By Josephine Daviditis
Josephine Daviditis, also known as
Josephine Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.

By Stella C. Davis
Stella C. Davis, Pro Se
4916 N. Magnolia, Chicago, Ill.

By Betty Horrigan
Betty Horrigan, Pro Se
1303 Carmen Avenue, Chicago, Ill.

100

DISTRICT COURT OF THE UNITED STATES OF AMERICA
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify that at 12:10 P.M. (DST) on July 19, 1957, I placed in the Mail Chute of the U. S. Post Office, Danville, Illinois, sealed, franked envelopes containing true copies of the Notice Of Appeal filed this 19th day of July, A.D. 1957 by Plaintiffs in the Matter of Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Plaintiffs vs The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation, Civil Action No. 1533-D, and said sealed, franked envelopes were addressed to:

The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation, (The Appellee) and to their attorneys—

Foreman, Meachum & Clapper
Attorneys at Law
708 Baum Building
Danville, Illinois.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Danville, in the District aforesaid, this 19th day of July A.D. 1957.

(Seal)

D. H. Reed
Clerk

111-112 • • •

113

DISTRICT COURT OF THE UNITED STATES OF AMERICA
Eastern District of Illinois

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, and keeper of the records and seals thereof, do hereby certify the foregoing to be The Original Papers from the file of said District Court in Civil Action No. 1533-D entitled Josephine Daviditis, also known as Josephine Davis and Stella C. Davis, and Betty Horrigan, Plaintiffs-Appellants vs The National Bank of Mattoon, Mattoon, Illinois, a Banking Corporation, Defendant-Appellee pursuant to the Rules of the United States Court of Appeals for the Seventh Circuit, Effective July 1st, 1956, which constitute the record on appeal in said cause, pursuant to Rules of Civil Procedure.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of Danville, in the District aforesaid, this 23rd day of August A.D. 1957.

(Seal)

D. H. Reed
Clerk

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Office - Supreme Court, U.S.
FILED
APR 21 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1958.

No. 941

JOSEPHINE DAVIDITIS, also known as **JOSEPHINE DAVIS, STELLA C. DAVIS**, and **BETTY HORRIGAN**,

Petitioners,

vs.

THE NATIONAL BANK OF MATTOON, Mattoon, Illinois, a banking corporation,

Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

JOSEPHINE DAVIDITIS, also known as JOSEPHINE DAVIS, Pro Se,
and
STELLA C. DAVIS, Pro Se,
4916 N. Magnolia Avenue,
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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1958.

No.

JOSEPHINE DAVIDITIS, also known as **JOSEPHINE DAVIS, STELLA C. DAVIS**, and **BETTY HORRIGAN**,

Petitioners,

vs.

THE NATIONAL BANK OF MATTOON, Mattoon, Illinois, a banking corporation,

Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals For The Seventh Circuit.

To The Honorable Earl Warren, Chief Justice, and Associate Justices of the Supreme Court of the United States.

Josephine Daviditis, also known as Josephine Davis, Stella C. Davis, and Betty Horrigan, Petitioners, Pro Se, prays that a Writ of Certiorari issue to review the Order of The United States Court of Appeals for the Seventh Circuit entered on January 22, 1958, affirming the Orders of the District Court for the Eastern Distgict of Illinois, and asserts the following:

REPORTS OF OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is set forth in an appendix "A" hereto.

The United States District Court of the Eastern District of Illinois, being the trial court below, which dismissed the plaintiff's complaint and denied their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support, issued no written opinions.

JURISDICTION.

The judgment of the District Court was entered on June 3, 1957 (R. 84-87) and on July 5, 1957, said court entered an Order denying their Petition to Review and Vacate Order of June 3, 1957 and Affidavit in Support thereto (R. 97-98) and that their cause dismissed shall stand.

On July 19, 1957, plaintiffs filed their Notice of Appeal, and on September 23, 1957, filed their Appendix and Brief for the Appellants in the United States Court of Appeals, Seventh Circuit. On January 22, 1958, The Court of Appeals affirmed the Judgment of the District Court, and Honorable Parkinson, Circuit Judge filed his opinion.

This petition is filed within ninety days from entry of judgment on appeal, affirming judgment and dismissal of their complaint, and accordingly the jurisdiction of this Court to review the Order of the United States Court of Appeals, Seventh Circuit by a Writ of Certiorari is invoked under Title 28 U.S.C. sections 1254 (1) (3) and

Part V, Rule 19(1) (b) of the Revised Rules of the Supreme Court of the United States, U.S.C. 28 sec. 1331, U.S.C. 12 sec. 1818, Title 28 U.S.C. Rule 56, 1895, and U.S. Constitution, Amendment XIV sec. 1, Amendment IV, Article IV sections 1 and 2 and Article VII, see Bradly, 7 Wall. 364, 19 L. Ed. 214, December 1868. *In Re Quarles*, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080, *Carrol* v. *U. S.*, 267, 132, Ex Parte Virginia 100 U.S. 346-F and U.S.C. Title 5 sec. 139 E & F, *Rosenblum* v. *Rosenblum*, 1943-42 New York, 52 d, 626, 181 Misc. 78, *Wilbur* v. *Ford*, D.C. Mass, 1949, 81 F. Supp. 641.

QUESTIONS PRESENTED.

This case involves an action for damages resulting from FRAUD upon the petitioners by the National Bank of Mattoon, a banking corporation, invoked under 28 U.S.C. section 1331, and violations of the National Banking Act in contravention with the provisions of the Probate Act of Illinois.

The questions presented in this petition are set heretofore: whether a Trial Court commits reversible error in dismissing Complaint and entering judgment and the Court of Appeals affirms the judgment and dismissal when:

A. The Courts below have decided important questions of federal law, which has not been, but which should be settled by this court, and have so far departed from the accepted and usual course of judicial proceedings by deciding issues of fact presented which substantially and directly affect the Constitutional and Civil Rights and privileges granted under the Constitution of the United States in the following manner:

1. The charges of FRAUD as such set forth is a denial of "Due Process of the Law" and violations of the XIVth Amendment to the Constitution.

2. The averments of the claim for relief do show real and substantial federal questions as evidenced by the EXHIBITS and with Supporting Affidavits to bring the action within sec. 1331 U.S.C. 28.

3. That petitioners complained to the Federal Bureau of Investigation in regard to the respondent, The National Bank of Mattoon, its officials and other named persons in their Complaint and pleadings. "It is the Right of Every Private Citizen of the United States to Inform an F.B.I. Agent, Treasury Agent, etc. of Violation of Internal Revenue Laws or other U.S. Laws under Rule 56 of U.S.C. Title 28, and this right is secured by the Constitution of the U. S." This act alone created a "Conflict of Interest" between the petitioners, and respondent, The National Bank of Mattoon, and the United States officers and employees, who aided them in this act wherein there was supposed to exist a Fiduciary Relationship and which has been ignored both by the Trial Court and the Court of Appeals for the Seventh Circuit.

4. Both the Trial Court and the Court of Appeals overlooked "Unlawful Searches" permitted by the respondent and its so-called attorneys who may violate the 4th Amendment to the U.S. Constitution made by Subterfuge or Fraud rather than by force.

5. "Wilfull" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13, imposing a Penalty on National Bank officers or agents on wilful violations of the Law implies a knowledge and a purpose to do wrong whereas evidence contained in the petitioner's Exhibits and statements in their Affidavits in regard to this knowledge on the part of the respondent was ignored by both the Trial Court and the Court of Appeals.

6. The Federal District Court was vested with jurisdiction of suit seeking Redress for Deprivation of Civil Rights guaranteed by the XIVth amendment to the Constitution regardless of Citizenship or amount in Controversy which was ignored by both the Trial Court and the Court of Appeals for the Seventh Circuit.

7. While National Banks are deemed "Citizens" of state where located for purpose of Federal Jurisdiction and no jurisdiction attaches by reason of their creation by National Laws, yet when a "Right" is asserted by a National Bank under authority of the Law of its creation, the determination of such a Right involves a Federal Question of which a Federal District Court has jurisdiction without regard to citizenship if the requisite amount is involved.

8. The Trial Court denied the petitioners' request for an attorney filed by a Motion in said court wherein petitioners gave reasons that they could not get an attorney to represent them anywhere because of the fraud, deceit, conspiracy and false representation of the respondent and its attorneys of which several were "Officers of the United States" and Justice Department whereas their actions could not be prosecuted under State Law of which they were immune as federal men and the National Bank asserted a "federal right" under the authority of its creation but still taking advantage of the "Probate Act of Illinois" whereas the respondent and its attorneys inveigled themselves into a position to further oppress, threaten and intimidate the petitioners in the free exercise of their rights under the constitution, statutes and laws of the United States and of the State of Illinois, and by this action rendered the petitioners legally helpless and in a virtual state of anarchy although respondents were clothed in laws of democracy. This involves federal questions which are vital to Public Interest throughout the United States of America.

STATEMENT OF CASE.

This action was brought under U.S.C. Title 28 section 1331, for judgment for Damages Resulting From Fraud against the respondent, The National Bank of Mattoon, a banking corporation.

The petitioners complained to the Federal Bureau of Investigation in the year of 1950, and thereafter about the National Bank of Mattoon, its officials and others mentioned in their Complaint and pleadings. That as the result of these complaints, the petitioner, Stella C. Davis, was advised by an F.B.I. agent of the Springfield, Illinois, office to see a U. S. Attorney, or his assistant, of which one Ray M. Foreman, a federal attorney in Danville, Illinois was recommended.

That on December 9, 1950, the petitioner, Stella C. Davis, went to Danville, Illinois, and saw, Ray M. Foreman, in his official position as an Assistant U. S. Attorney, and from that date on, and via U. S. Mails, and Federal Communications, he entered into a conspiracy and fraud to eventually get the respondent, The National Bank of Mattoon, as administrator, himself as its attorney, as well as his associates, and by deceit and fraud use the petitioners to help him achieve this position.

That on April 2, 1951, Ray M. Foreman, together with Kenneth Clapper, embezzled the legal file and detective's report from the petitioners in their hotel room in the U.S. Grant Hotel, Mattoon, Illinois, on the assumption of legal protection and governmental investigation of their complaints.

That on the 3rd day of April, 1951, it being the day of the funeral of the petitioner's father and husband, he, Ray M. Foreman, together with Kenneth Clapper, Elizabeth McVey, E. C. Bauer and Martin Behrend and others in the National Bank of Mattoon conspired and perpetrated a Fraud upon petitioners by causing:

1. The decedent's safety deposit box No. 932 to be opened, inventoried without the "due process and protection" of the laws, federal and State.

2. Made Illegal Searches of the assets of the deceased both in the National Bank of Mattoon, and other business institutions in the City of Mattoon, Illinois.

3. Ray M. Foreman, illegally obtained the P.O. box key 212 and entered said post office box to make unlawful searches of the deceased's mails and assets.

4. Ray M. Foreman, Assistant U. S. Attorney, together with Kenneth Clapper, Elizabeth McVey, E. C. Bauer and Martin Behrend conspired and perpetrated a fraud upon the petitioners by causing a fraudulent Petition of Letters of Administration to be drafted, filed together with a fraudulent acknowledgment by Elizabeth McVey annexed thereto and made a part of the records of the Coles County Probate Court, together with the National Bank of Mattoon, becoming Administrator, by Fraud, and Ray M. Foreman, unbeknown to petitioners at the time, its attorney and at the same time making false representations to petitioners and misrepresenting his federal position to them by making claims of governmental investigations etc. on their behalf as well as on behalf of the government.

That on April 3, 1951, the Hearing allegedly held in the Court of Coles County, Illinois was a Fraud, and violation of the Civil Practice Act of Illinois inasmuch as there was no "Notice" of this alleged hearing to petitioners, nor was there a Waiver of Notice on file in said court by peti-

tioners or widow regarding this hearing or attendance of same.

That the National Bank of Mattoon was involved with irregular, if not criminal proceedings together with an Assistant State's attorney, Ralph Suddes and others in a fraudulent City Court Action No. 49-C-50 Mattoon, Illinois (R. 20-24, 25, 73) in the year 1949, wherein they together with the deceased were defendants, and the widow, plaintiff.

Due to the "Conflict of Interest" between the widow, petitioners, heirs-at-law and the respondent, The National Bank of Mattoon, there was continuous antagonism and strife. That the petitioners who informed to the F.B.I. about the bank were treated with contempt by the bank officials and the attorneys and others mentioned in their Complaint and pleadings and threatened by bank officials.

ARGUMENT.

I.

The Federal District Court was vested with jurisdiction of suit seeking redress for deprivation of Civil Rights guaranteed by the United States Constitution, Amendment 14, regardless of diversity of Citizenship or amount in controversy.

This action involves "Officers of the U.S. representing a National Bank which is subject to the paramount authority of the United States. These federal men under a salary of the government, were also getting an outside salary from an Estate wherein the bank came in as Administrator by Conspiracy and Fraud instigated by the defendant-appellee, Ray M. Foreman, Assistant U. S. Attorney, aided by Kenneth Clapper, and at a later date by Clyde Meachum, U.S. Referee in Bankruptcy.

There was a "Conflict of Interest" between the widow of the decedent (Tr. p. 69), the heirs-at-law and the National Bank of Mattoon, Illinois in 1949 and 1950 prior to the death of William Daviditis, alias William Davis (Tr. pp. 16-18) and in view of such conflict of interest it fraudulently became the administrator of the estate of the decedent, whereas they had formerly been Trustees in a fraudulent Separate Maintenance Action in the City Court of Mattoon, Mattoon, Illinois, 49-C-59 (Tr. p. 76) wherein they were defendants with the decedent and the widow, plaintiff. (Tr. p. 58). Bradley, 7 Wall. 364, 19 L. Ed. December 1868, and *Cummins* v. *U. S.*, Ark. 1916, 232, F. 844, 147 C.C.A. 38.

Under U.S.C. 12, sec. 248 (K) the bank is given the right to act as administrator, etc. and they are not required to execute bonds under the Probate Act of Illinois. We submit that this Rev. Stat. Chapter 3, sec. 335 and Rev. Stat. Chapter 3 sec. 299 to recover property and discover information regarding same is in contravention of the law under U.S.C. Title 12, sec. 248, and unconstitutional when it gives an administrator, trustee, etc. who is clothed under the Federal and State power and who is in direct conflict with the rights and interest of the heirs and widow of the decedent, and who usurps that power to refuse access under the law to the decedent's dealings, financial and otherwise, and who is being accused of fraud and conspiracy and other misapplications and violations of the National Banking Act is in a position to forevermore deny them of access to the confidential records of all trusteeships, conservatorships, etc. which the bank had prior to the death of William Daviditis, alias William Davis, thereby being in direct conflict of the appellants' interest when there was prior adverse litigation and the bank was the defendant together with the decedent and the widow the plaintiff. (Tr. pp. 7, 11, 12).

The appellee, Ray M. Foreman, together with Kenneth Clapper and Elizabeth McVey, aided by E. C. Bauer, caused a fraudulent petition for letters of administration issued, with a fraudulent acknowledgment affixed to same by Elizabeth McVey. Ill. Rev. Chpt. 38, sec 321 and 322. No hearing was had as far as the heirs and widow were concerned and no notice of this alleged hearing served upon them, neither did they waive this right in writing according to the Probate Law. Illegal Searches by the appellees, Ray M. Foreman and Kenneth Clapper, and getting access into the safety deposit box No. 932 of the decedent without the "Due Process of the Law" on a federal working day and no protection of the rights of

the heirs and widow. *Colorado Nat'l Bank of Denver* v. *Bedfore*, Colo. 1940.

Potter v. *U. S.*, 155, 438, 15 S. Ct. 144, 39 L. Ed. 214, and *Carroll* v. *U. S.*, 267 U.S. 132. Unlawful Search may violate the 4th Amendment to the Constitution by Subterfuge or Fraud. Bradley, 7 Wall. 364, 19 L. Ed. 214, December 1868. *Whitlock* v. *McClusky*, 91 Ill. 582.

II.

It is the right of every private citizen of the United States to inform an F.B.I. Agent, Treasury Agent, etc. of Violation of Internal Revenue Laws or other United States Laws under Rule 56 of U.S.C., Title 28.

In Re Quarles, Ga. 1895, 15 S. Ct. 959, 158 U.S. 537, 39 L. Ed. 1080. The appellants did inform the F.B.I. on the National Bank of Mattoon, Mattoon, Illinois and its official, employee, and others. That as the result of such information and disclosure they were oppressed, threatened and intimidated, and more so by the defandant-appellee, Ray M. Foreman, U.S. Assistant Attorney involved as an attorney for the National Bank of Mattoon in their late father's and husband's estate due to the prior conflicts of interests. This right to inform is secured by the Constitution and a conspiracy to injure, oppress, threaten or intimidate them in the free exercise or enjoyment of this right, or because of their having exercised it may be punishable by an "Act of Congress". (Tr. pp. 4, 34, 35, 41, 46, 52).

III.

Where existence of fiduciary relationship has been established. Law presumes that transactions between parties by which dominant party has profited are fraudulent.

Stephenson v. *Kidechek*, 919 N.E. 542, 410 Ill. 139.

IV.

In the absence of counter-affidavits averments contained in the affidavits and supported by Exhibits by the Plaintiffs in support of their Reply Brief must be taken as true.

Leitch v. *Hine*, 393 Ill. 211, 218.
Brandt v. *St. Paul Mercury Indemnity Co.*, 285 Ill. 212, 217.

V.

"Wilful" in the Act of Congress of 1882, 22 Stat. at L. 166, Title 13, imposing a penalty on a National Bank Officer or agent on wilful violations of the law implies a knowledge and purpose to do wrong. (Tr. 18-23, 73, 11-17)

Prescott v. *Haughey*, C.C. in 18956 S. F. 569.

VI.

Rule 9, Civil Rules of Federal Procedure. "Under this rule requiring that averments of Fraud be stated with Particularity complaint alleging Fraud was not subject to Objection that it contained redundant, immaterial, impertinent or scandalous allegations.

Israel v. *Alexander*, D.C. N.Y. 1942 50 F. Supp.

VII.

That the appellants petitioned the Court for an attorney and were denied same in Court and in Court they made an Oral Motion to transfer their cause of action to the Criminal Side of the Docket and were denied this, too.

CONCLUSION.

It is respectfully submitted that the decision of the United States Court of Appeals for the Seventh Circuit should be reversed and the cause of action be remanded to the District Court for the Eastern District of Illinois for a trial by jury for evidence, witnesses and facts to be presented in said court by the appellants and that public interest requires review of "conflict of interest" cases and wherein informers rights, immunity and privileges were jeopardized by the respondents and other persons named in their pleadings and informed about to the Federal Bureau of Investigation.

Respectfully submitted,

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(Opinion)

In oral argument before this court the plaintiffs contend that the District Court had jurisdiction because their civil rights were violated and the defendant violated the National Banking Laws.

The complaint is such a gallimaufry that it is impossible to determine any theory upon which it declares. It appears to attempt to allege fraud on the part of the defendant in opening a lock box of decedent, William Daviditis, alias William Davis, and in being appointed administrator of and in administering his estate in the Coles County Probate Court of Illinois. Absolutely no facts are pleaded showing a federal question present pursuant to Title 28 U.S.C.A. sec. 1331 or a violation of civil rights which would confer jurisdiction on a federal court. Title 12 U.S.C.A. sec. 1818 provides for termination of status as an insured bank by the Board of Directors of the Federal Deposit Insurance Corporation and has no application here whatsoever.

The District Court was correct in dismissing the complaint for lack of jurisdiction of the subject matter and the judgment is Affirmed.

A true Copy:

Teste

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "A"

IN THE UNITED STATES COURT OF APPEALS
For The Seventh Circuit
No. 12112—September Term 1957—January Session 1958
Josephine Daviditis, also known as
Josephine Davis, Stella C. Davis
and Betty Horrigan,
Plaintiffs-Appellants
v.
The National Bank of Mattoon,
Mattoon, Illinois, a Banking Corporation,
Defendant-Appellee.
Appeal from the United States District Court
for the Eastern District of Illinois

January 22, 1958.

Before MAJOR, FINNEGAN and PARKINSON, Circuit Judges.

PARKINSON, Circuit Judge. The plaintiffs, pro se filed a complaint in the District Court for the Eastern District of Illinois asserting "Jurisdiction In This Cause is Based On Title 28, Section 1331 of The U. S. Code" and alleging therein that the "allegations were violations of Title 12 U.S.C. section 1818-unsound practices and violations of the National Bank Act."

The complaint alleges that the plaintiffs are residents